IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12632 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PURIBEN RUDABHAI MUCHHADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12632 of 2000

MR MURALI N DEVNANI for Petitioner No. 1

MR SIRAJ GORI, LD.AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 25/11/2004

ORAL JUDGEMENT

1. Puriben Rudabhai Muchhadiya - widow of Rudabhai Maganbhai Muchhadiya, petitioner, has filed this petition with a prayer that this Court may issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent authorities to consider the case of the petitioner regarding family pension.

2. The brief facts giving rise to this petition are as under:-

2.1 Rudabhai Maganbhai Muchhadiya - husband of the petitioner joined the office of the Executive Engineer, PWD Department, Rajkot - respondent No.3, with effect from 1965 as Rojamdar and after putting in more than 5 years service, the husband of the petitioner was taken up on work charge establishment as a work charge vide order dated 11.3.1974. He was taken as a work charge w.e.f. 15.5.1974.

2.2 It is the case of the petitioner that however by order dated 12.1.1987 the name of the husband of the petitioner was shown at Serial No.3 and vide said order the husband of the petitioner was appointed as work charge employee on a probation for a period of six months. During the course of the service, the husband of the petitioner met with an accident while he was placing roof over the building of stores of PWD of Aji Dam and as he fell down from the roof, he received so many injuries ultimately he succumbed to the injuries. Thus the husband of the petitioner died while he was service on 13.7.1989.

2.3 In view of the aforesaid facts and circumstances of the case, the petitioner had applied for family pension before respondent No.3 on 3.11.1998 as well as on 19.8.1998.

2.4 It is the case of the petitioner that he was given pension of Rs.375/- p.m. and also other pensionary benefits of Rs.4,644/- and he was also given gratuity in this behalf. However, as regards family pension is concerned, the Government by its communication dated 17.4.1999 stated that as petitioner has not completed five years of service as work charge employee in view of the Government Resolution dated 8.1.1976 the petitioner is not entitled to family pension.

2.5 Being aggrieved and dissatisfied with the said action, the petitioner has filed present petition before this Court on 10th December, 1999. This Court has already admitted the matter on 23rd July, 2001, and today the matter is placed for further hearing before this Court.

3. On behalf of respondent, affidavit-in-reply was filed by Deputy Executive Engineer in this behalf. It is the case of the respondent that Rudabhai Maganbhai became work charge labour from 15.1.1987 and expired on

13.7.1989 and hence his qualified service is less than five years and therefore he is not entitled for pensionary benefits as per Government Resolution dated 8.1.1976.

4. Learned advocate for the petitioner has stated that the aforesaid stand of the Government is absolutely illegal and bad and contrary to the Division Bench judgment of this Court in Letters Patent Appeal No.1544 of 1998 in Special Civil Application No.3840 of 1997. In that case the question was squarely as to whether the a person who have not completed five years service is entitled to family pension or not. In that case the learned Single Judge has dismissed the petition, however when matter was reached before Division Bench, the Division Bench has considered the further resolution of the Government. The Division Bench has subsequently relied upon the Resolution dated 31st July, 1987, by which the Government has decided that the families of the Government employees who died in harness irrespective of their length of service, then requirement of 5 years service was done away with and to that extent family pension scheme framed under the Government Resolution dated January 1, 1972 stood modified by making pension scheme admissible to family members of those employees who had died while in service. There is already a judgment of this Court considered the said resolution in the decision rendered in Mankuvarba M.Vaghela v. Tharad Nagar Panchayat and another reported in 1992(1) GLR 375.

5. In view of the Division Bench judgment of this Court, the petition is allowed. The order of Government denying family pension to the petitioner is quashed and set aside. The Government is directed to give family pension to the petitioner by 28th February, 2005. However, if by chance the pension is not paid by 28th February, 2005, then the Government is liable to pay interest at the rate of 9% on the delayed payment. Rule is made absolute with no order as to costs.

(K.M. Mehta, J.)

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